S.B. Civil First Appeal No.501/2004

Veer Singh Yadav.

vs.

Rao Tularam Rashtriya Unnati Vidyalaya Samiti, Bikaner.

Date : 29.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.

Mr. AK Dave, for the respondent.

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Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the judgment and decree of the trial court dated 4.3.2004 which was passed by the Court of District Judge, Bikaner in Civil Original No.112/2001.

Brief facts of the case are that the plaintiff/ respondent, a school, which appears to be of a society, filed a suit for recovery of Rs.2 lakhs on allegation that the defendant/appellant submitted an application before the plaintiff on 15.7.1998 and took a loan of Rs.2 lakhs. Since the appellant was teacher in the school, therefore, interest free loan was granted to him by the plaintiff by taking resolution on 25.7.1998. In pursuance of that resolution taken on the application of the appellant, a cheque no.833336 dated 9.9.1998 was given to the appellant from which the appellant took the amount of Rs.2 lakhs.

Since the appellant did not repay the loan amount, therefore, the plaintiff filed the suit for recovery of the said amount.

The defendant submitted written statement and stated that he had no requirement of Rs.2 lakhs on 15.7.1998 but in fact since the appellant's bus was taken on hire basis by the plaintiff school with a condition that in case, there will be liability arising out of any accident, that will be paid by the plaintiff school and since the appellant's bus met with an accident resulting into death of about 14 persons and large number of claim cases were filed out of which 10 were decided on 5.6.1998 creating liability of about Rs.4 lakhs against the appellant, therefore, the appellant requested the plaintiff school to pay the claim amount in pursuance of the written agreement in pursuance of which the plaintiff took the appellants' bus on hire basis. The school administration persuaded the appellant to submit a loan application instead of demanding the amount against the award and, therefore, the appellant submitted application dated 15.7.1998. The defendant received Rs.2 lakhs vide cheque no.833336 dated 9.9.1998 and paid this amount to satisfy the award which was passed by the Motor Accident Claims Tribunal against the appellant. In these circumstances, according to the appellant, this was not a loan transaction but this was a payment by the plaintiff school in pursuance of the earlier agreement which was executed between the plaintiff school by which the plaintiff school undertook the accident liability of the bus taken on hire basis by the plaintiff

from the defendant/appellant.

The trial court framed five issues. The issue no.1 is that whether the appellant took loan of Rs.2 lakhs from the plaintiff ? The issue no.2 is about interest at the rate of 12% ? The issue no.3 is whether any agreement was executed between the plaintiff and the defendant on 5.12.1988 ? The issue no.4 is that whether Rs.2 lakhs were not given by the plaintiff to the defendant as loan but it was given in pursuance of the agreement dated 5.12.1988 ?

The trial court held that it is not in dispute that the appellant himself applied for loan in writing and in pursuance of that, the resolution was taken by the management of the school and thereafter, a cheque was issued to the appellant which the appellant received and encashed, therefore, it is case of loan and not the payment by plaintiff to defendant on account of plaintiff's liability for the compensation. However, so far as agreement dated 5.12.1988 is concerned, the trial court observed that even if there was an agreement dated 5.12.1988, then the term of that agreement was not enforced by the defendant and inspite of condition for satisfying the award amount in the agreement, the defendant himself took the loan from the school, therefore, in case, the defendant had any cause for recovery of the award amount from the plaintiff, then the defendant could have taken action for recovery of the amount and should not have taken loan, therefore, the trial court rejected the appellant's plea and decreed the suit of the plaintiff. Since there was no agreement for payment of interest, therefore, relief of

interest was denied by the trial court.

According to learned counsel for the appellant, the documents are not in dispute as the defendant's application dated 15.7.1998 and resolution dated 25.7.1998 are not in dispute nor the defendant is disputing about receipt of Rs.2 lakhs in pursuance of the resolution dated 25.7.1998 vide cheque no.833336 dated 9.9.1998 but at the same time, the trial court has committed serious error of fact as well as error of law in appreciating the facts of the case. The agreement dated 5.12.1998 was executed by the plaintiff on behalf of the school and in that agreement, there is clear mention of undertaking of accident liability by the plaintiff. Therefore, in the totality of the circumstances, it is clear that there was no reason for the defendant to take loan for any purpose. It is also submitted that the accident is not in dispute, passing of award against the defendant is also not in dispute and condition of award is not in dispute. Therefore, the trial court should have construed the documents in sequence and instead of taking one document out of all as sole deciding factor.

I have considered the submissions of the learned counsels for the parties.

It is clear from the letter dated 15.7.1998 wherein the appellant/defendant specifically mentioned that he suffered certain award against him and he has to pay Rs.4 lakhs. The appellant admitted that he is not in position to pay the award amount, therefore, a loan of Rs.2 lakhs may be

sanctioned to the appellant. The appellant was teacher in the school is not in dispute. If the appellant had a right to demand any amount of compensation from the school in pursuance of the agreement dated 15.12.1988, then he could have sought a relief of passing of award against the plaintiff school in the Motor Accident Claims Tribunal but nothing has come on the record why that request was not made to the Tribunal and such defence was not taken by the appellant.

According to learned counsel for the appellant, the appellant did not took this defence because as per the condition in the agreement dated 5.12.1988, the appellant had a right to recover the amount of all claim amounts from the school in those cases also where the plaintiff/respondent has not been impleaded as party. Therefore, there was no reason for the appellant to take this plea in claim cases.

The argument advanced by learned counsel for the appellant cannot be a good ground for rejecting the circumstance against the appellant because of the simple reason that the agreement dated 5.12.1988 specifically provides that the liability amount of the school will remain in all cases whether the school is party or not. Therefore, this is not a term of agreement between the parties that the defendant/appellant shall not seek direct relief against the school itself in the Accident Claim cases. Apart from it, that fact is only a circumstance and not decisive factor for holding that whether the amount

taken by the appellant from the respondent vide cheque no.833336 is a loan amount or an amount paid by the school to satisfy the award passed against the appellant. This is one of the circumstance only which shows that despite the agreement dated 5.12.1988, the appellant, without taking any plea before the Tribunal, in writing submitted before the school for payment of loan. Apart from it, it is clear that the appellant did not set up a counter claim for passing a decree on the basis of the right which the appellant is claiming under the agreement dated 5.12.1988. The appellant failed to explain the reason for applying for the loan when he had right to recover the compensation amount from the school.

It may further be worthwhile to mention here that the agreement was executed by none else but by the elder father of the appellant himself, as a secretary of the school. When such was a position, then there appears to be reason to draw appropriate inference against the parties to the transaction who are defendant and his elder father.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya